STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2000-288

June 26, 2000

CENTRAL MAINE POWER COMPANY
Proposed Terms and Conditions for Custom Solutions Program Filed Pursuant to Chapter 83

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

We approve terms and conditions that will allow Central Maine Power Company (CMP) to offer promotional allowances to general service customers for projects that expand the customers' use of electricity in an efficient manner.[1]

II. PROCEDURAL BACKGROUND

On March 24, 2000, CMP filed proposed terms and conditions for its new Customer Solutions Program, Terms and Conditions § 45, Pages 45.0, 45.1, 45.2 (all Originals). Under the program, CMP will offer funding to general service customers that expand the use of electricity in their specific applications "in an efficient and productive way." Such funding is defined as a "promotional allowance" under Chapter 83 of the Commission's Rules.[2] Programs such as this one, which encourage customers to increase their usage of electricity, require prior approval of the Commission. Chapter 83 § 4. Specifically, the Commission must find that the "allowance or program is just, reasonable and in accord with applicable statutes, rules and regulations." *Id.* As required by Chapter 83 § 5, CMP shareholders will fund the program.

The Commission's Staff issued a data request seeking further information about the program.[3] CMP clarified that the benefit/cost criteria it will use to determine eligible projects will be an "Internal Rate of Return Calculation where the Company's

[1]Commissioner Diamond concurs with this decision but issued a separate opinion. See attached Separate Opinion – Commissioner Diamond.

[2]"Promotional Allowance" means any reduction in rates or charges or any rebate or credit granted by a public utility to a customer for the purpose of encouraging any person to select or use the service or increase usage of the service of a utility, to select, purchase, install, or use any appliance or equipment designed to use such utility's service, or to use any other particular service of such utility. Chapter 83 § 1(E).

[3]We incorporate CMP's May 4, 2000 data responses into the record of this case.

shareholders investment will be compared to return on investment projected kWh sales." CMP also states that it currently has $250,000 budgeted for the program.

III. HISTORICAL BACKGROUND

In deciding whether to approve this program it is important to consider the historical background of the Commission's treatment of promotional allowances, including special rates and discounts. Beginning in 1969, the Commission adopted a policy disfavoring allowances and discounts that promoted the use of electricity. In that year, the Commission issued General Order No. 29, Re: Practices Relating to Promotional Allowances for Electric and Gas Companies.[4] General Order No. 29, describes the Commission's concern about whether promotional allowances are consistent with the provisions of Title 35 [now 35-A], and in particular 35 M.R.S.A. § 102 [now 35-A M.R.S.A. § 702]. This section prohibits public utilities from giving any undue or unreasonable preference or advantage to any person. The General Order required electric and gas utilities to file with the Commission descriptions of any promotional allowance programs 10 days prior to their effective date.

Only four years earlier, in 1965, the Commission had found no undue or unreasonable discrimination resulting from a CMP promotional allowance program. In that case, 10 persons complained (all residential customers who were connected with the fuel oil business) that CMP's program of giving cash allowances to residential customers to encourage the installation of equipment using increased amounts of electricity was unreasonable, unlawful and unjustly discriminatory. The Law Court upheld the Commission's determination based on the Commission's finding that because CMP had sufficient capacity to serve the increased load resulting from the program, the Company would not be forced into an expansion program at a cost to ratepayers. The Commission further found that the amounts expended for the program were reasonable when compared to the anticipated increased revenue due to the promotion. The total program costs were also reasonable compared to CMP's total promotional and advertising budget. *Gifford v. Central Maine Power Company*, 217 A.2d 200 (Me. 1966). When the Commission adopted General Order No. 29, the change in the energy supply picture had begun to affect the Commission's position concerning promotions.

By 1979, when the Commission adopted Chapter 83 as the successor to General Order No. 29, it found that "promotional allowances by electric and gas utilities generally do not benefit the ratepayers and should not be allowed as an operating expense for ratemaking purposes unless evidence affirmatively demonstrates that they are just and reasonable in the particular case." *Maine Public Utilities Commission, M.#200*, Order and Statement of Factual and Policy Basis at 2 (July 16, 1979). The Commission further stated that

[4]General Orders functioned similarly to rules prior to the adoption of the Maine Administrative Procedures Act's rulemaking requirements in 1977.

> Such activities encourage customers to maintain or increase their level of usage of utility services which require consumption of scarce energy resources. Higher rates may also result from increased energy costs and the additional plant necessary to meet increased customer demand. Moreover, such institutional advertising, promotional advertising, and promotional allowances by electric and gas utilities, which are protected monopolies not subject to marketplace competition, are of most questionable benefit to their customers.

Id. at 3.

Around that same time, the Commission rejected CMP providing 33% discounts to its employees and retired employees. 35 M.R.S.A. § 103 specifically made it lawful for public utilities to offer special rates to its employees. In *Central Maine Power Company, Increase in Rate*s, F.C. 2332, 2336, the Commission found that "in this era of energy shortages and rising marginal costs of producing electricity we find it unreasonable for the Company to provide a [employee] discount in order to promote electricity." The Law Court overturned the Commission's decision finding it lacked substantial evidence to support its decision. *Central Maine Power Company v. Public Utilities Commission,* 405 A.2d 153, 179 (Me. 1979).

Subsequently, in 1981, the Law Court upheld the Commission's October 1980 decision to require CMP to phase-out its employee discount for electricity usage. The Law Court found that the Electric Rate Reform Act [enacted in 1977] had by necessary implication repealed section 103 "to the extent that that section would prohibit the PUC from ordering the phase-out of a wasteful environmentally unsound promotional discount." *Central Maine Power Company v. Public Utilities Commission,* 433 A.2d 331, 336 (Me. 1981) (citation omitted). The Court further opined:

> Both PURPA and the Electric Rate Reform Act reflect that it makes little sense to spend the earth's capital as though it were income. A discount promoting the use of electrical energy, the generation of which depends on the expenditure of nonrenewable resources, is in this sense both "uneconomical" and "unwarranted."

Id. at 336 – 337 (footnotes and citations omitted).

Consistent with the mandate of the Electric Rate Reform Act, PURPA and Maine's least cost planning policy and preferences for conservation and demand management (35-A M.R.S.A. § 3191 first adopted in 1987, repealed effective Mar. 1, 2000), demand side management programs replaced promotional efforts through the early 1990s. Around this time, electric utilities expressed an interest in offering discounted rate contracts to some customers. The Commission approved such

offerings if the utility could show: (1) that the load under contract would not exist but for the special rate; (2) the rate would cover the incremental cost of the contract service plus a substantial contribution to fixed costs; and (3) that the contractual load to be served was in the long term interest of the general body of ratepayers. See e.g., *Bangor Hydro-Electric Co., Proposed Schedules to Provide for Economic Development and Sales of Incremental Energy*, Docket No. 92-095 (Feb. 18, 1993); *Central Maine Power Company, Proposed Schedule to Provide Rate GS-SP General Service Special Productivity Rate*, Docket No. 91-344 (June 2, 1992).

CMP's alternative rate plan adopted in 1994 (and subsequent flexible pricing plans for Maine Public Service and BHE) continued to embody these principles. CMP's plan provided a number options, depending on the type of load, for offering discounts without having to seek prior Commission approval. It also included safeguards to protect core customers and to avoid undue discrimination. *Central Maine Power Co., Increase in Rates,* Docket No. 92-345(II) (Jan. 10, 1994) Order at 15-20.

With the restructuring of the electric industry, the Commission has reiterated its intention to apply these same criteria to special contracts entered into post-March 2000. See *Central Maine Power Company, Annual Price Change Pursuant to Alternative Rate Plan*, Docket No. 99-155 (July 13, 1999). Under the Restructuring Act, transmission and distribution utilities must continue to offer conservation programs (as developed by the State Planning Office) but energy conservation and demand side management as part of least cost planning is no longer required. 35-A M.R.S.A. § 3211; 35-A M.R.S.A. § 3191 (repealed eff. Mar. 1, 2000).

IV. DECISION

Maine's energy policy with regard to special rates, discounts, and promotions that encourage the use of electricity has come full circle over the last 30 years. Tension continues between the competing goals of preserving and encouraging load growth on the one hand and the State's interest in encouraging the most efficient use of energy resources, particularly as they affect the environment, on the other hand.

The Customer Solutions Program proposed by CMP is designed to provide financial assistance to projects that expand the customer's current use of electricity, in efficient and productive ways. Examining the program using the principles embodied in the *Gifford* decision as well as current statutory requirements, we find that the "allowance or program is just and reasonable and in accord with applicable statutes, rule and regulations" as required by Chapter 83 § 1(E). There is no indication that CMP's T&D system is inadequate to handle any increased load resulting from this program. The amounts CMP expects to spend are limited and are designed to be less than revenues generated by the program. To the extent additional revenues are generated, upward pressure on rates is reduced. The program's goal to encourage only efficient use is consistent with energy conservation principles.

Our approval is based, in part, on the limited scope of this program (planned spending of $250,000). We will examine further the criteria for funding projects and consider in more detail the impact on all ratepayers if CMP intends to expand the program beyond limited size described in its filing. Therefore, if CMP intends to spend more than $500,000 for the program, it must seek additional approval from the Commission. We also remind CMP that it must report its promotional allowances annually, pursuant to Chapter 83 § 2(A).

Accordingly, we

O R D E R

That Central Maine Power Company, Terms and Conditions 45, consisting of Pages 45.0, 45.1, 45.2 (all Originals) shall go into effect as of the date of this Order.

Dated at Augusta, Maine, this 26th day of June, 2000.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond: Commissioner Diamond concurs with this decision but issued a separate opinion

Separate Opinion – Commissioner Diamond

I concur with the result reached by the Commission in this case. I am filing a separate opinion because I believe there are certain larger policy questions about the "reasonableness" of promotional allowance programs that should be addressed in a subsequent proceeding. Particularly in light of the modest amount being sought in this case, it does not seem fair to defer action on CMP's current request pending consideration of those questions. I would, however, serve notice that we intend to address them the next time the issue arises.

As a preliminary matter, I would note that in making the affirmative finding of reasonableness required by Chapter 83, § 4 our Rules, the Commission's Order states that "[t]here is no indication that CMP's T&D system is inadequate to handle any increased load resulting from this program." Since there is actually no evidence on this point either way, I assume the inclusion of this language means that promotional allowances under CMP's proposed program that stimulated additional consumption in excess of the company's current delivery capacity, thereby potentially necessitating an increase in rates at some future point in time, would not meet the reasonableness test and would thus exceed the scope of approval conveyed by the Order.

To the extent that the Commission's Order interprets the Chapter 83 reasonableness standard to mean that the promotional allowance must have the effect of maximizing the usage of the T&D utility's fixed assets in a way that will generally lower per-unit delivery costs, it does not cause me any problems. My concern is whether, in an unbundled world, more than the impact on the T&D system should be considered.

By way of illustration, assume that CMP gives promotional allowances to encourage commercial customers, who currently lack air conditioning, to install an efficient type of air conditioning in parts of CMP's service territory that can handle the additional load without adding capacity. Based on the impact on the T&D system, this could be said to be reasonable. However, since Maine's energy prices are now tied to the New England market, which peaks in the summer months, should one also consider that the effect of adding air conditioning could drive up those prices? If an objective of the reasonableness standard is to avoid promotional allowance programs that increase prices for electricity consumers, should the analysis be limited to the delivery cost and exclude the energy cost?

An even more difficult situation would be presented by a promotional allowance that conflicted with a ratepayer funded conservation program. Through an assessment on their T&D bills, ratepayers are required to support programs, approved by the State Planning Office, that are designed to conserve electricity. On the assumption that these programs are intended to benefit all electricity consumers by reducing aggregate demand, and not just those who implement the conservation measures, it is conceivable that that a demand side management effort and a utility promotional allowance could work against each other. Should this be a factor in determining the reasonableness of

the promotional allowance under our rule? Similarly, should there be some form of coordination to ensure that ratepayer money is not wasted in a conservation effort that is negated by a promotional allowance? At present, no such coordination exists.

The fact that I raise these questions does not mean that I have determined how they should be answered. It is certainly not uncommon to have government funded or mandated programs designed to influence people to act in ways that conflict with the types of behavior that private companies seek to induce. For example, the fact that government endeavors to persuade people to make greater use of public transportation in urban areas does not mean that car companies cannot offer promotions in those areas. Whether investor owned T&D utilities should be treated in a different manner, at least with respect to the consequences of their conduct that do not affect their own rates, is a fair question. Indeed, it is perhaps one that should be answered by the Legislature.

In light of all that has occurred since Chapter 83 was adopted, the question of what makes promotional allowances reasonable should be addressed in greater depth, with interested parties hopefully providing input. Thus, I would serve notice that the Commission intends to take a more thorough look at this issue the next time it receives a request to approve a promotional allowance program, assuming it has not already done so through a rulemaking or other generic proceeding.

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.